

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

June 8, 2004

Vice-Chairman R. Hilt called the meeting to order at 4:07 p.m., and roll was taken.

MEMBERS PRESENT: C. Kufta, R. Hilt, E. Fordham, J. Clingman-Scott, R. Schweifler

MEMBERS ABSENT: S. Schiller, B. Larson

STAFF PRESENT: B. Lazor, H. Griffith

OTHERS PRESENT: C. Link, 331 W. Laketon; P. Witek, PWB Inc.; D. Jones, 1410 Leonard; J. Jacobitz, 1356 Leonard; P. Dorsey, 170 Washington.

APPROVAL OF MINUTES

A motion to approve the regular meeting minutes of May 11, 2004, was made by J. Clingman-Scott, supported by E. Fordham and unanimously approved.

PUBLIC HEARINGS

Hearing, Case 2004-18: Variance request from the lighting standards to allow flood lighting to be placed on the property located at 951 E. Barney, Charlie Link. B. Lazor presented the staff report. The subject property is located South of the intersection of Valley and Barney Street. The property is 2.04 acres. There are residential uses to the north and Industrial uses on the same side of Barney as the subject property. The property is being used by Intra-City Dispatch as a trucking facility. The facility is located in an I-2 (General Industrial District), which is the most intense industrial development district. In talking with the applicant, the different type of lights are needed to ward off criminal activity on the property. The ordinance requires that new lighting be a down type having 100% cutoff. The applicant is proposing lights that are placed along the perimeter of the property and directed towards the inside. The rear of the property is a wooded area. The applicant has said that down type lights would be hard to have in the middle of the parking area because the size of the trucks and their maneuverability would tend to run into the lighting. In general, the applicant wishes to flood the property with light from the edges toward the center of the property. The reason for the requirements for the down type lighting is to prevent the leakage of light into the night sky. Having lights that leak light into the sky unnecessarily wastes energy and pollutes the sky with unnecessary light. The quote from the applicant states that side baffling will be installed to add light cutoff. The applicant has proposed lights that are lower than the 25' height requirement and conforms to the light spectrum requirement. If this variance were to be approved, the lighting shall be installed in such a way as to prevent glare and extraneous light from entering into the residential areas across the street. Staff has not received any public comments.

J. Clingman-Scott asked about the projections of the lights. B. Lazor explained how the light would be projected. R. Hilt stated that the property next door to this has similar lighting to what the request is for. C. Kufta asked about the background to the change in the ordinance regarding this type of lighting. J. Clingman-Scott stated that she was on the Planning Commission at the time this was discussed. The reason it had been changed was so the lighting would be less intrusive, less light, and to prevent sky lighting. C. Link stated that trucks are in and out of the property at all hours of the day and night. The drivers have concerns for their safety as well as the safety of their trucks and items inside the trucks. The proposed lights would help the drivers feel safe. C. Kufta asked the applicant if they had looked at lighting fixtures that would be allowed under the ordinance. C. Link stated that they had, but with the trucks backing in and out of the property, they felt that the lights would end up getting destroyed. C. Kufta asked about the placement of the lights on the property. B. Lazor explained it based on the supplied drawing. C. Link stated that all the lighting would only be along the Barney St. side of the property facing toward the parking lot and woods. J. Clingman-Scott asked about the owner of the wooded lot as well as the zoning of the lot. C. Link stated that they have been in conversations with the owner so that they may purchase the area. B. Lazor stated that the wooded lot is also zoned I-2.

A motion to close the public hearing was made by C. Kufta, supported by J. Clingman-Scott and unanimously approved.

E. Fordham felt that there would be no impact on the residential homes across the street since the lights would be facing the wooded area. J. Clingman-Scott agreed and added that the baffling needed to be strong in order to help insure no sky lighting.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the site is in a commercial zone. The lights are needed to keep vandalism down. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because in order for the Coke company to keep their business in Muskegon, they need the lights to stop the break-ins (the building west of this site are using flood lights). Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because it will keep this company in Muskegon. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because they need to put in flood lighting. There is not enough room in the parking lot for lighting fixtures required by the City. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because they are trying to keep people from stealing from the company. The requested variance is the minimum action required to eliminate the difficulty because they need the flood lighting to stop theft.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow the installation of flood lighting at 951 E. Barney, be approved, based

on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void. 3) The baffling need to keep the light from going into the sky. 4) The lighting to be installed is on the Barney St. side of the property only, with the lights being aimed to the south (toward the wooded area), was made by E. Fordham, supported by J. Clingman-Scott and unanimously approved.

R. Schweifler arrived at 4:26 p.m.

Hearing, Case 2004-19: Variance request to allow a home with a length that is more than two times its width at 1410 Leonard, by Paul Witek. B. Lazor presented the staff report. This property is located at the intersection of Leonard and Creston. The property is approximately 24,648 square feet in size. The property is surrounded by residential uses. There are groups of vegetation toward the rear and side of the property. The property is located in the middle of a residential zone. The house is a ranch style custom built stick framed home. The home is in an “L” shape as can be seen from the supplied plan. The Ordinance does not permit a home that has a length more than twice its width. The length of this home is 79’ and the width is 27’. This home does have an attached garage, but the ordinance specifically states that the garage is not considered in the calculation. If the garage is counted the width of the home would be 51’, which would meet ordinance requirements. If looking at the proposed home from Creston, there would be 51’ of house frontage including the garage. The garage is fronting off of Leonard, as well as the rest of the house. The garage is 26’ wide and projects off the front of the house. The front elevation of the house is very attractive. It has variable projections, differing rooflines, and pitches. This is a house that will add to the attractiveness of the neighborhood. David Hill of 1376 Leonard called to say that if they need to stay within parameters, then they should stay within them. If they change the needs for one, with the right considerations they should change the needs of another. He is against this request.

The commission members viewed and discussed the plans for the home. P. Witek explained the history behind the choice of this home for the property. J. Jacobitz stated that she is concerned that this home will not fit in with the area. She was concerned that the vacant lot that is between her property and this property, wouldn’t be able to have a home built on it in the future due to the size of this home. R. Hilt explained the zoning rules in regards to setbacks and that this home would be meeting all the zoning setbacks. The reason for the request is pretty much due to the attached garage is not calculated in the depth to width ratio. J. Jacobitz was fine with the request once this was explained to her. D. Jones stated that he has been waiting a long time to be able to build the home that he wanted. J. Clingman-Scott asked if the plan for the home was set for the brick and siding. P. Witek stated that it would be a brick veneer and siding.

A motion to close the public hearing was made by R. Schweifler, supported by J. Clingman-Scott and unanimously approved.

J. Clingman-Scott stated that she generally wouldn’t consider this, but it would be in keeping with the character of the neighborhood.

The following findings of fact were offered: There are exceptional or extraordinary

circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the home that is being placed on the two lots with a combined frontage of 186 ft. with a garage. The home looks fine. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because the owners just want to build their dream home that they have looked at for two years. The owner purchased enough property (two lots) to make his dream a reality. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the home will be a beautiful addition to the area. There will be no negative affect on the neighbors of the public in general. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the difficulty in meeting the ordinance is the design of the home which is not perceived as irregular (non-complying) due to the garage protruding from the front and the raised roof line. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because the home is very attractive and designed by the owner. The plan was selected, designed, and drawn based on aesthetics and function. The requested variance is the minimum action required to eliminate the difficulty because the owner and contractor would like a variance on the 2-1 width to depth ratio. The design ratio is 2.6/1 but with the garage looks good.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a stick built home that has a length more than twice its width at 1410 Leonard, be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void. 3) The footprint of the home would remain the same as the supplied drawings, was made by C. Kufta, supported by R. Schweifler and unanimously approved.

Hearing, Case 2004-20: Variance request to allow a six foot fence in front of the front building line at 170 Washington (fence is partially constructed), by Jon Dorsey. B. Lazor presented the staff report. The property is located with frontage on three streets, Washington, 5th, and Campus. The square footage is 5,104 sq. ft. The property is located across from Muskegon High School. There are residential uses and zoning on all other sides. This case is a result of an enforcement action by the Zoning Inspector. The applicant was replacing a non-conforming fence on the property. The Zoning Ordinance does not permit fences higher than 4' in front of the front building line. This property has the unique situation of having three front building lines. The applicant has supplied pictures showing that a 6' fence was located in this location in the past. The applicant had been continually maintaining the old fence because of vandalism. The applicant started to install a new vinyl height with a height of 6' in place of the old fence. The property is located in the Campus Historic District. The Historic District Commission heard the application for the fence last month. They voted to approve the fence. This was conditioned on the approval of a variance from the ZBA. If the ZBA does not grant the variance, the applicant will need to remove the fence. They may construct a fence that meets HDC and Zoning Ordinance standards. Public Comments: 1) Erin Fettig of 154 Campus called to say she was in support of the fence at this location. The other fence was old and needed fixing. 2) Roy Winegar

and Barbara Klingenmaier of 148 Campus wrote an email stating: While we might not be able to attend the meeting for the above noted case, we want to make clear our position. We have lived at 148 Campus Avenue for 14 years and there has always been a fence similar to the one being constructed at 170 Washington. The former fence was in disrepair and an eyesore. We heartily welcome this replacement fence and would encourage a positive consideration for the project. 3) Phyllis Winegar of 159 Campus wrote a letter (which was supplied to the commission members) stating that she is in favor of the request.

P. Dorsey explained how they were replacing the lattice fencing. R. Schweifler asked how long they had been living in the home. P. Dorsey stated that they had lived there for 3 years. E. Fordham stated that this home is almost like being in the road. R. Hilt stated that while school is in session, he has seen damage that has been done to the fence.

A motion to close the public hearing was made by R. Schweifler, supported by E. Fordham and unanimously approved.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because as far as the applicant is aware, they are the only property in the neighborhood with three sides of frontage. This in combination with the high motor and foot traffic (also unique somewhat to our property) makes a significant difference in the noise and privacy levels of our home. It is also in keeping to our knowledge, with the historical nature of this home. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because the basic difference is privacy. If all three sides of our home must be open to the public, they have no privacy in their own yard. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the variance doesn't materially touch any other property. The neighbors (without exception thus far) have all commented on this needed improvement both aesthetically and for some privacy to be given to the property. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because they are actually wanting to replace an existing fence of identical dimensions. However, since the previous fence was installed, this ordinance was passed. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because there is an expense to this and they would like to enjoy their property in privacy. The requested variance is the minimum action required to eliminate the difficulty because a fence short enough to meet the code would not allow any privacy for the owner in their yard.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a six foot fence in front of the front building line at 170 Washington, be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by J. Clingman-Scott, supported by R. Schweifler and unanimously approved.

OTHER

955 W. Laketon – The commission members discussed whether they should rehear this case. R. Hilt suggested waiting on this until all the board members are present.

A motion to table the rehearing of the case, was made by R. Schweifler, supported by E. Fordham and failed with C. Kufta, R. Hilt, and J. Clingman-Scott voting nay.

C. Kufta stated that he is willing to make a decision. They had already heard this case twice.

A motion to deny the rehearing of the case, was made by C. Kufta, supported by J. Clingman-Scott and unanimously approved.

There being no further business, the meeting was adjourned at 5:00 p.m.

hmg
6/8/04